

HEARING BEFORE THE
U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION
ON

*ISSUES TO BE ADDRESSED AT THE HONG KONG MINISTERIAL CONFERENCE OF THE DOHA
ROUND OF THE WORLD TRADE ORGANIZATION'S TRADE EXPANSION NEGOTIATIONS*

Room 538 Dirksen Senate Office Building
Senate Banking Committee (5th Floor)
1st and Constitution Avenue, NE
Washington, DC 20510
Thursday, December 8, 2005

*The World Trade Organization's Hong Kong Ministerial Conference,
U.S. Trade Negotiating Goals, and U.S.-China Trade Relations*

Terence P. Stewart, Esq.
Managing Partner
STEWART AND STEWART
2100 M Street, NW
Washington, DC 20037

Introduction

The Doha Development Agenda (Doha Round) was launched at the 4th WTO Ministerial Conference in Doha, Qatar in December 2001.

The Doha Round negotiations address a broad range of issues, including work on new subjects as well as work on issues related to the implementation of agreements arising from the Uruguay Round Agreement, which created the WTO.

The initial goal was to conclude the Doha Round by January 1, 2005. Because of delays occasioned by the Members' inability to reach consensus regarding basic negotiating modalities at the 5th WTO Ministerial Conference in Cancun in 2003, the Doha Round's timetable was rescheduled, and the WTO now hopes to conclude the Doha Round by the end of 2006.

One of the purposes of the Hong Kong Ministerial Conference is to address the status of the Doha Round negotiations. Initially, it had been hoped that at Hong Kong the Members could reach consensus on issues such as basic modalities (*e.g.*, in agriculture and non-agricultural market access) or focus the issues for continuing negotiations (*e.g.*, in rules). This is not likely

now, however, because of continuing wide divergences in areas such as agriculture and non-agricultural market access. Thus, the Members have recalibrated their expectations for Hong Kong. While it is expected that the Members will focus specific attention to the areas of agriculture, non-agricultural market access and development, it is also expected that another Ministerial will be needed toward the end of the first quarter of 2006 to finalize modalities if the goal of concluding the Doha Round by the end of 2006 is to be met.

This statement reviews U.S. trade negotiating objectives, the status of several key areas of the Doha Round negotiations as it enters the Hong Kong Ministerial and implications of Doha for U.S.-China trade relations.

I. Congressional Trade Negotiating Objectives

In the Bipartisan Trade Promotion Authority Act of 2002, Congress stated that trade expansion was an engine of economic growth, that expansion of international trade was vital to national security, and that trade was critical to the economic growth and strength of the United States and to its leadership in the world. See 19 U.S.C. § 3801(b).

In that enactment, Congress established the following 9 “overall” trade negotiating objectives for the United States applicable to all U.S. trade negotiating efforts, including the Doha Round:

(1) More open, equitable and reciprocal market access	(6) Promote respect for rights of workers and children consistent with core ILO labor standards
(2) Reduction or elimination of trade barriers and distortions that decrease market opportunities	(7) Prevent weakening or reduction of domestic environmental and labor law protections
(3) Further strengthen international trading disciplines and procedures (including dispute settlement)	(8) Ensure that small businesses benefit from trade agreements through equal access to international markets, equitable trade benefits, expanded export opportunities, and reduction or elimination of trade barriers
(4) Foster economic growth, raise living standards and promote full employment	(9) Promote universal ratification of ILO Convention 182 regarding the prohibition of the worst forms of child labor
(5) Ensure that trade and environmental policies are mutually supportive	

See 19 U.S.C. § 3802(a).

Congress also established “principal” trade negotiating objectives for the United States in the following 17 identified areas.

(1) Trade barriers and distortion	(9) Electronic commerce
(2) Trade in services	(10) Reciprocal trade in agriculture
(3) Foreign investment	(11) Labor and the environment
(4) Intellectual property	(12) Dispute settlement and enforcement
(5) Transparency	(13) WTO extended negotiations
(6) Anti-corruption	(14) Trade remedy laws
(7) Improvement of the WTO and multilateral trade agreements	(15) Border taxes
(8) Regulatory practices	(16) Textile negotiations
	(17) Worst forms of child labor

See 19 U.S.C. § 3802(b).

Many U.S. proposals in the Doha Round have reflected and pursued these principal trade objectives, policies and priorities. However, it must be noted, not all of the U.S. trade negotiating objectives are part of the Doha Round mandate and thus are not being addressed in that forum.

Separately submitted is a Doha Round scorecard as we head to Hong Kong. Based on perceptions drawn from publicly-available information, I have assigned grades indicating my view of the progress to date in achieving U.S. trade negotiating objectives in the Doha Round. The pre-Hong Kong Doha scorecard is not intended to be either an expression of praise for or criticism of the Administration; rather I present it as an objective assessment of collective progress in the Doha negotiations towards the U.S. statutory trade negotiating objectives. In sum, my grades are: Overall: C; Agriculture: C; Non-Agricultural Market Access: B-; Services: C-; Rules: D; and Transparency: C.

As can be seen from the scorecard, of the total negotiating objectives identified, about one-fourth of the U.S. trade negotiating objectives have been amongst the options being considered; about one-fourth of the U.S. trade negotiating objectives are not being considered within the mandate of the Doha Round; and, for about one-half of the U.S. trade negotiating objectives, there is still an opportunity to get the objectives included in a final package although in many situations the opportunity is not being seriously pursued.

As the Members prepare for Hong Kong, the Doha negotiations are widely viewed as in trouble. From my perspective in the private sector, I do not see an intention from major trading partners to conclude a Round with large ambitions. Indeed, the public position taken by many developed and developing countries is that they are not able to make significant contributions to trade liberalization in at least some areas. Thus, while many areas remain open to potentially achieving U.S. objectives, the likelihood of achieving a significant conclusion must be viewed as diminished. Indeed, in some areas, (e.g., rules), the state of the negotiations supports a high probability of outcomes that historically have been unacceptable to the U.S. Congress. It is hoped that the recent political appointment and nomination for important open positions at the Department of Commerce will result in a change of dynamics but, at the moment, some parts of the negotiations are in serious difficulties from the U.S. perspective.

Moreover, despite significant advances in transparency under the WTO in comparison to its predecessor, the GATT, the WTO itself has been increasingly deviating from its policy of openness and transparency by creating a large subset of documents, important to understanding the course and status of the negotiations, which are kept from public view and not required to ever be released. For example, in the Hong Kong Draft Text, there are references to six “JOB” documents, none of which are publicly available from the WTO, yet are of essential importance in understanding the issues being negotiated.

II. Status of the Doha Round

The Doha Declaration launched the Doha negotiations on a range of areas, including built-in agenda items from existing WTO agreements (*e.g.*, negotiations in agriculture and services), issues raised by various developed and developing members who sought to make future negotiations “balanced” and to address concerns of the public in various countries, and “outstanding implementation issues” in numerous categories which seek, *inter alia*, to rebalance the rights and obligations of nations assumed as part of the Uruguay Round package. Specifically, the Declaration identified 19 negotiating areas.

Implementation-Related Issues and Concerns	Agriculture	Services	Market Access for Non- Agricultural Goods
Trade-Related Aspects of Intellectual Property	Trade and Investment	Trade and Competition Policy	Transparency in Government Procurement
Trade Facilitation	WTO Rules (Antidumping, Subsidies, RTAs)	Dispute Settlement Understanding	Trade and Environment
Electronic Commerce	Small Economies	Trade, Debt and Finance	Trade and Technology Transfer
Technical Cooperation and Capacity Building	Least-Developed Countries	Special and Differential Treatment	

In July 2004, the WTO adopted a Framework Agreement which established guiding principles for continuing all aspects of the negotiations going forward as well as launching negotiations on trade facilitation.¹

As the WTO prepares for the Hong Kong Ministerial, the current status of the Doha Round can be viewed through the lens of the Draft Ministerial Text recently prepared and issued by WTO Director General Pascal Lamy.² That document summarizes the state-of-play of the Doha negotiations. It does not purport to represent an overall agreement. Rather, it identifies the areas

¹ Doha Work Programme, Program: Decision Adopted by the General Council on 1 August 2004, WT/L/579 (2 August 2004).

² See Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005).

where progress has been achieved and further work needs to be done. The Draft Text reviews the status of negotiations in the following areas:

- Agriculture negotiations
- Cotton
- NAMA negotiations
- Services negotiations
- Rules negotiations
- TRIPS negotiations
- Environment negotiations
- Trade Facilitation negotiations
- DSU negotiations
- S&D Treatment
- Implementation
- TRIPS & Public Health
- Small Economies
- Trade, Debt and Finance Trade & Transfer of Technology
- Doha paragraph 19
- TRIPS non-violation & situation complaints
- E-commerce
- LDCs
- Integrated Framework
- Technical Cooperation
- Commodity Issues
- Coherence
- Aid for Trade
- Recently-acceded Members
- Accessions

In addition, the Draft Text appends 6 annexes which, except for the report on trade facilitation, consist of reports presented on the responsibility of the respective Chairs of the negotiating groups on Agriculture, NAMA, Services, Rules, Trade Facilitation, and Special and Differential Treatment. The annexes are not agreed texts but assessments of the current state of negotiations in the respective areas.

The following reviews three major Doha issues (agriculture; NAMA; services) as well as several other selected issues of U.S. interest (rules and trade facilitation) that the Hong Kong Ministerial will or may address.³

³ Although not separately addressed in this paper, the issue of Development is also a major Doha issue that will be addressed in Hong Kong. The area of Development is primarily focused upon the needs of the least-developed countries (LDCs). To that end, the Draft Text “reaffirms” that special and differential (S&D) treatment is an integral part of the WTO Agreements and takes particular note of Agreement-specific S&D proposals, “especially the five LDC proposals.” Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005) at paras. 29 and 30.

The five LDC proposals are: (1) that developed country Members (and developing country Members in a position to do so) should provide bound duty free and quota free market access for all products originating from all LDCs; (2) that requests for waivers by LDCs under Article IX of the WTO Agreement and the Understanding in respect of Waivers of Obligations under the GATT 1994 be given positive consideration and a decision taken within 60 days; (3) that LDCs shall be allowed to maintain on a temporary basis existing measures that deviate from their obligations under the TRIMs Agreement; (4) that LDCs will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial or trade needs, or their administrative and institutional capacities; and (5) that the General Council will urge donors, multilateral agencies and international financial institutions to coordinate their work to ensure that LDCs are not subjected to conditionalities on loans, grants and official development assistance that are inconsistent with their rights and obligations under the WTO. *See generally* Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005) at Annex F.

A. Agriculture

Agriculture is an area of great importance to many Members. As a result, it has been a contentious issue. The 3 Pillars of WTO agricultural negotiations are (1) domestic support (subsidies), (2) export competition (subsidies), and (3) market access (tariffs).

The goals of the Doha Round in agriculture are substantial improvement in market access, reduction, and eventual elimination, of all forms of export subsidies, substantial reductions in trade-distorting domestic support, and S&D treatment for developing countries.

Among the major participants in the agriculture negotiations are the following:

United States	The U.S. seeks an ambitious result in agriculture. The U.S. has proposed a two-stage procedure. Stage 1 would consist of substantial reductions of trade-distorting support measures and tariffs, along with the elimination of export subsidies, to be phased-in over a 5-year period. Stage 2 would consist of an additional five year phase-in period to achieve elimination of remaining trade-distorting policies in agriculture. In particular, with respect to market access, the U.S. has proposed progressive tariff reduction (developed countries would cut their tariffs by 55-90%), tariff rate caps (no tariff would be higher than 75%), and special treatment for sensitive products (limited number of tariff lines) and for developing countries (lesser cuts and longer phase-in periods). With respect to export competition, the U.S. has proposed elimination of export subsidies by 2010. With respect to domestic support, the U.S. has proposed substantial reductions in trade-distorting domestic support, with deeper cuts by countries with larger subsidies.
EU	The EU is the most protected agricultural market. To date, the EU's proposals have not been as ambitious as the U.S. The EU and G10 (mainly developed country net food importers) support an Uruguay Round formula approach, which provides more flexibility with regard to higher tariffs.
G10⁴	This group consists of net agriculture importing countries. They generally have the most defensive interests in the negotiations.
G20⁵	This group consists of 19 developing countries, including China. They generally do not seek to liberalize their markets.
G33⁶	This group consists of 42 countries who are not seeking an ambitious result. They are generally opposed to harmonization of tariffs across countries and support taking the different tariff structures of developing countries into account.

⁴ Bulgaria, Chinese Taipei, Republic of Korea, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway, Switzerland.

⁵ Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Tanzania, Thailand, Venezuela, Zimbabwe.

Cairns Group ⁷	This group consists of traditionally agriculture exporting countries. They generally support an ambitious result.
G90 (LDCs) ⁸	This group consists of 64 countries, primarily developing and least-developed countries. In general, they are concerned with the issues of food aid and the effect that market liberalization would have on market preferences (preference erosion).

The Draft Text, while recognizing that “much remains to be done in order to establish modalities and to conclude the negotiations,” summarizes the state of agriculture negotiations as follows:

On domestic support:

- There is a working hypothesis of three bands for developed countries for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support with higher linear cuts in higher bands.
 - The Chairman’s report notes that “there is a strongly convergent working hypothesis that the thresholds for the three bands be US\$ billion 0-10; 10-60; >60. On this basis, the European Communities would be in the top band, the United States and Japan in the second band, and all other developed countries at least in the third band.”⁹
- Developed countries in the lower bands with high relative levels of Final Bound Total AMS will make an additional effort in AMS reduction.
- There has been some convergence concerning the reductions in Final Bound Total AMS, the overall cut in trade-distorting domestic support and in both product-specific and non product-specific *de minimis* limits.

On export subsidies:

- There is an emerging convergence on some elements of disciplines with respect to export credits, export credit guarantees or insurance programmes with repayment periods of 180 days and below, as well as on some aspects of exporting state trading enterprises, and on some elements regarding the disciplines on food aid necessary to eliminate commercial

⁶ Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Congo, Cote d'Ivoire, Cuba, Dominican Republic, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Republic of Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, Zimbabwe.

⁷ Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, Uruguay.

⁸ Angola, Antigua and Barbuda, Bangladesh, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Fiji, Gabon, The Gambia, Ghana, Grenada, Guinea (Conakry), Guinea Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, Togo, Trinidad and Tobago, Tunisia, Uganda, Zambia, Zimbabwe.

⁹ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex A at para. 8.

displacement.

On market access:

- Progress has been made on *ad valorem* equivalents.
- There is a working hypothesis for four bands for structuring tariff cuts. (The Chairman's report also indicates "considerable convergence on adopting a linear-based approach for cuts within each band).
- There have been some recent movements on the designation and treatment of Special Products and elements of the Special Safeguard Mechanism (SSM).

On special and differential treatment:

- A consensus exists in the Framework on several issues in all three pillars of domestic support, export competition and market access.
- Some progress has been made on other special and differential treatment issues.

In his report to the WTO General Council on December 2, 2005, DG Lamy summarized the major agriculture negotiation issues and questions to be addressed at Hong Kong, in light of the Doha mandate and the July 2004 Framework, as:

1. What are the elements of the formulae for the reduction commitments in trade-distorting domestic support? And what are the disciplines that should complement the reduction commitments?
2. What are the elements of the formula for tariff reduction commitments and other elements to support it? And what are the flexibilities that should accompany the tariff reduction commitments?
3. What agreement is needed regarding parallelism in order to determine an end-date for elimination of all forms of export subsidies?
4. What are the elements necessary to deal with cotton ambitiously, expeditiously and specifically in all three pillars?
5. What are the elements of S&D necessary in all three pillars?¹⁰

Regarding the outlook for the agriculture negotiations, it is widely viewed that the outcome will depend on the convergence of the level of ambition. Considering that WTO Members have struggled for the last 27 months to achieve agreement on the level of ambition, the outlook at best is uncertain.

Moreover, the U.S. trade surplus in agriculture has disappeared in the first 10 years of the WTO as U.S. exporters have faced a host of market access barriers, some of which (*e.g.*, sanitary and

¹⁰ Report by the Chairman of the Trade Negotiations Committee, WTO Director-General Pascal Lamy, 2 December 2005, http://www.wto.org/english/news_e/news05_e/tnc_chair_report_2dec05_e.htm.

phytosanitary (SPS) measures) are covered by existing agreements but are not otherwise covered by the ongoing negotiations.

B. Non-Agricultural Market Access (NAMA)

Progress in NAMA, as in many other areas of the negotiations, has been slow, as many countries are waiting for significant movement in agriculture before making serious commitments in other areas.

The goals of the NAMA negotiations are to reduce or eliminate tariffs (*i.e.*, tariff peaks, high tariffs and tariff escalation), to reduce or eliminate non-tariff barriers (particularly on products of export interest to developing countries), to have comprehensive product coverage with no product exclusions, and to account for special needs of developing countries (*i.e.*, less than full reciprocity in reduction commitments).

Major elements being addressed in NAMA include (1) the tariff reduction formula or formulae (*i.e.*, Swiss or other type of formula), (2) flexibilities within the formulae for developing countries and LDCs, (3) whether to apply tariff cuts to bound or applied tariff rates, (4) treatment of unbound products; (5) sectoral initiatives, and (6) non-tariff barriers (NTBs).

The NAMA Chairman's text identifies the issues of the formula, "paragraph 8" flexibilities, and treatment of unbound tariffs as the "three elements of the NAMA framework on which solutions are required as a matter of priority."¹¹ The formula concerns the basic modality for cutting tariffs. Paragraph 8 flexibilities refers to paragraph 8 of the 2004 Framework which provided that developing countries would enjoy longer implementation periods for their tariff reductions; and choose between: (1) less than formula cuts for up to [10%] of their tariff lines representing up to [10%] of their import value; or (2) not apply formula cuts, or leave unbound tariff lines, for up to [5%] of their tariff lines representing up to [5%] of their import value. Treatment of unbound tariffs refers to what should be the specific modality for reducing unbound tariff lines. The 2004 Framework provided that for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year.

The NAMA Chairman's description of the status of these three priority elements provides a sense of the divergences of view among the Members:

There is a more common understanding of the shape of the formula that Members are willing to adopt in these negotiations. In fact, Members have been focusing on a Swiss formula. During the past few months, much time and effort has been spent examining the impact of such a formula from both a defensive and offensive angle. In terms of the specifics of that formula, there are basically two variations on the table: a formula with a limited number of negotiated coefficients and a formula where the value of each country's

¹¹ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex B at para. 5.

coefficient would be based essentially on the tariff average of bound rates of that Member, resulting in multiple coefficients.¹²

* * *

A central issue concerning the paragraph 8 flexibilities has been the question of linkage or non-linkage between these flexibilities and the coefficient in the formula. A view was expressed that the flexibilities currently provided for in paragraph 8 are equivalent to 4-5 additional points to the coefficient in the formula, and as a result there was need to take this aspect into account in the developing country coefficient. . . . Some of those Members have also expressed the view that the numbers currently within square brackets are the minimum required for their sensitive tariff lines, and have expressed concern about the conditions attached to the use of such flexibilities, such as the capping of the import value. . . . In addition, the need for more transparency and predictability with regard to the tariff lines which would be covered by paragraph 8 flexibilities has been raised by some of these Members.¹³

* * *

There is an understanding that full bindings would be a desirable objective of the NAMA negotiations, and a growing sense that unbound tariff lines should be subject to formula cuts provided there is a pragmatic solution for those lines with low applied rates. . . . There now appears to be a willingness among several Members to move forward on the basis of a non-linear mark-up approach to establish base rates, and in the case of some of these Members, provided that such an approach yields an equitable result. A non-linear mark-up approach envisages the addition of a certain number of percentage points to the applied rate of the unbound tariff line in order to establish the base rate on which the formula is to be applied. There are two variations of such an approach. In one case, a constant number of percentage points are added to the applied rate in order to establish the base rate. The other variation consists of having a different number of percentage points depending on the level of the applied rate. In other words, the lower the applied rate the higher the mark-up and the higher the applied rate, the lower the mark-up. There is also one proposal on the table of a target average approach where an average is established through the use of a formula, with the unbound tariff lines expected to have final bindings around that average.

On a practical level, in their discussions on unbound tariff lines, Members have been referring mostly to the constant mark-up methodology to establish base rates. In the context of such discussions, the number for the mark-up has ranged from 5 to 30 percentage points.¹⁴

The U.S. is seeking an ambitious result in NAMA negotiations. The U.S. has proposed that low tariffs of 5% or less be eliminated by 2010, that remaining tariffs be harmonized to less than 8% through application of a "Swiss formula," and that between 2010-2015, tariffs would be further reduced to zero. The U.S. also supports expanded sectoral tariff elimination in selected highly-

¹² Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex B at para. 6.

¹³ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex B at para. 10.

¹⁴ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex B at paras. 11 and 12.

traded goods as soon as possible, but no later than 2010.¹⁵ In addition, the U.S. supports a process to identify and eliminate non-tariff trade barriers.

Other developed countries (*e.g.*, EU) also generally support a Swiss-type non-linear formula to reduce and harmonize tariffs. This type of formula would address tariff peaks by reducing high tariffs by a larger percentage than low tariffs. Within this formula approach, S&D treatment of developing countries would be taken into account by applying to them a lower formula coefficient. Thus, at present, various Members have proposed coefficients that range between 5-10% for developed countries and 15-30% for developing countries. For example, the EU has proposed coefficients of 10% for developed countries and 15% for developing countries; while Pakistan has proposed 6% and 30%, respectively.

Some developing countries (*e.g.*, Argentina, Brazil, India) have proposed that the tariff-cutting formula be based on each country's average bound tariff rate which would allow countries with higher initial tariffs to reduce their tariffs at a lesser rate than countries with lower initial tariffs. These countries generally tend to have high bound tariff rates, notwithstanding that they may have lower applied tariffs. Thus, should the tariff-cutting formula finally be based on a country's average bound tariff rate (rather than applied rate), the degree to which tariffs in these countries would realistically be cut would be limited or could amount to no cut at all.

Over the last 50 years, developed countries have taken major strides in tariff liberalization and, as a result, have low average tariffs (*e.g.*, 3% in the U.S.), notwithstanding that, for some products considered "sensitive," developed countries still maintain significantly higher tariffs. At the same time, real market access gains now can be achieved principally by obtaining significant tariff liberalization from developing countries, especially advanced developing countries (*e.g.*, Brazil; India) where tariffs are often significantly higher than in developed countries. Thus, real expanded market access in Doha will require a higher level of tariff liberalization by developing countries in order to achieve harmonization of tariff rates. However, harmonization will not occur in the Doha negotiations as developing countries are being asked to do less on a formula basis and will also, through paragraph 8 flexibilities, be permitted to apply less than formula reductions for a significant number of Harmonized Tariff (HS) categories.

Moreover, for selected countries that have reduced tariffs on an autonomous basis (*i.e.*, have applied tariff rates lower than their bound rates), the U.S. and other Members would need extra large duty reductions from bound rates to achieve any actual tariff liberalization vis-à-vis existing applied rates.

¹⁵ The U.S. has identified the following sectors for potential initiatives: agricultural equipment; bicycle parts; chemicals and allied products, including photo film & soda ash; civil aircraft; construction equipment; environmental technologies; fish and fish products; furniture; information technology and electronics products; medical equipment; non-ferrous metals; paper; pharmaceuticals; scientific equipment; steel; toys; wood products.

With respect to sectoral initiatives, there has been progress in identifying sectors of potential interest. The U.S., as well as some other Members, supports voluntary efforts to liberalize market access within selected sectors on the principle of “critical mass.” That is, the sector initiative would be effective only if those countries accounting for the majority of trade in a sector participate. This approach would ensure mutual gains while at the same time mitigate the problem of free-ridership from non-participants. The NAMA Chairman’s text notes that work is ongoing on the following sectors based on the critical mass approach: bicycles, chemical, electronics/electrical equipment, fish, footwear, forest products, gems and jewellery, pharmaceuticals and medical equipment, raw materials and sporting goods.¹⁶ In addition, sectoral work is ongoing in apparel, auto/auto parts, and textiles.¹⁷

With respect to NTBs, there has been some progress in identifying NTBs that Members wish to negotiate. Various Members (including the U.S.) have made submissions regarding NTBs but negotiations are still basically in the NTB-identification stage. To this point, the NAMA Chairman’s text notes that “NTBs currently proposed for negotiation in the NAMA Group are contained in document JOB(05)/85/Rev.3.” While this “JOB” document may simply be a compilation of publicly-available Member proposals, this cannot be verified because this “JOB” document, as are all others, is not publicly available, thus limiting public access to important negotiating documents. This is just one example of the increasing trend, noted *supra*, of lack of transparency in the negotiating process.

One issue that is contentious in NAMA is that of treatment of newly-acceded members (NAMs). NAMs (including China) have proposed that special provisions should apply to them. Other Members have objected to special treatment for NAMs. The NAMA Chairman summarized the issue as follows:

Members recognize the extensive market access commitments made by the NAMs at the time of their accession. From the discussions held on this subject, it was clarified that those NAMs which are developing Members have access to paragraph 8 flexibilities. As special provisions for tariff reductions for the NAMs, some Members are willing to consider longer implementation periods than those to be provided to developing Members. Other proposals such as a higher coefficient and “grace periods” for the NAMs were also put forward, but a number of Members have objected to these ideas. There has also been a submission by four low-income economies in transition who have requested to be exempt from formula cuts in light of their substantive contributions at the time of their WTO accession and the current difficult state of their economies. While some Members showed sympathy for the situation of these Members, they expressed the view that other solutions may be more appropriate. Some developing Members also expressed concern about this proposal creating a differentiation between Members. Further discussion is required on these issues.¹⁸

¹⁶ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex B at para. 21.

¹⁷ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex B at para. 21.

¹⁸ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex B at para. 25.

The Draft Text, while recognizing that “much remains to be done in order to establish modalities and to conclude the negotiations,” summarizes the state of NAMA negotiations as follows:

On the non-linear formula:

- There is a working hypothesis to use a Swiss Formula.
- There is a need to finalize its structure and details, as well as the issues of unbound tariffs and flexibilities, as early as possible.

On S&D treatment:

- Special and differential treatment is important and less than full reciprocity in reduction commitments should be an integral part of the modalities.

On ad valorem equivalents:

- Progress has been made to convert non *ad valorem* duties to *ad valorem* equivalents on the basis of an agreed methodology.

On product coverage:

- A common understanding has been reached on the issue of product coverage, with differences on limited issues remaining.

On NTBs:

- Progress has been made in the identification, categorization and examination of notified NTBs.
- Members are developing bilateral, vertical and horizontal approaches to the NTB negotiations.
- Some of the NTBs are being addressed in other fora including other Negotiating Groups.
- There is a need for specific negotiating proposals on NTBs.

In his report to the WTO General Council on December 2, 2005, DG Lamy summarized the major NAMA negotiation issues and questions to be addressed at Hong Kong, in light of the Doha mandate and the July 2004 Framework, as:

1. Can Ministers agree on all the elements needed to finalize the formula and other elements that support it?
2. Can Ministers resolve remaining differences about flexibilities?
3. On unbound tariffs, can Ministers agree that a mark up is the way forward?¹⁹

Regarding the outlook for the NAMA negotiations, the level of ambition on trade liberalization will be directly related to the level of ambition achieved in agriculture. Many agriculture-exporting Members have made it clear that there will be little market liberalization in NAMA if

¹⁹ Report by the Chairman of the Trade Negotiations Committee, WTO Director-General Pascal Lamy, 2 December 2005, http://www.wto.org/english/news_e/news05_e/tnc_chair_report_2dec05_e.htm.

there is not significant market liberalization in agriculture. Moreover, the likelihood of lower tariff cuts and the existence of exemptions for developing countries (and potentially for newly-acceded Members) can lessen the prospect that even a big package can address some of the basic market distortions experienced by U.S. exporters.

C. Services

The Services negotiations are important to many WTO members, including the U.S., the EU, and India, to name just three. The U.S. seeks an ambitious services outcome. Generally, services represent about two-thirds of world GDP and typically constitute the largest part of a Member's GDP. For the U.S., services account for 78% of private sector GDP and 80% of private sector employment. Thus, the services negotiations, if successful, could have a significant effect on trade in goods as well as services. To date, however, the quality and quantity of offers in the services sector has been disappointing as many Members have delayed making significant offers as they are awaiting developments in the agriculture area.

A goal of the Doha Round is to bring greater international competition to services such as banking and stock brokerage, health care, education, transportation and telecommunications. The negotiating framework for services was established in the Doha Declaration, which reaffirmed the Guidelines and Procedures for the Negotiations (adopted in 2001) which established the modalities and procedures for negotiations, and provided that the negotiations should aim to achieve progressively higher levels of liberalization, increase participation of developing countries, and should be comprehensive (*i.e.*, no a priori exclusions of any service sector or mode of supply). In contrast to the market access negotiations in agriculture and NAMA, which are focused on formula-based approaches to tariff liberalization, the services negotiations are based on the request and offer approach

The Declaration also endorsed the services negotiations already undertaken (*i.e.*, the "built-in" agenda initiated in January 2000 under Article XIX of the GATS). In addition, Members are conducting negotiations on four services issues: domestic regulation; emergency safeguards; government procurement; and subsidies.

Developed countries, such as the U.S. and EU, generally are the countries with the greatest interest in liberalizing trade in services. However, many developing countries, in particular India, have strong interests in certain service sectors and in expanding opportunities under mode 4, which governs the temporary movement of service-delivery professionals. Expansion of mode 4, however, is a politically sensitive issue for many developed countries. The U.S., among others, has been reluctant to grant more extensive mode 4 market access beyond that currently allowed, in part because such expansion may overlap with and require modification to domestic immigration law.

Broadly speaking, the relatively slow progress of the services negotiations to date has been the result of a number of factors, including the time-consuming nature of the request-offer approach, the lack of offers put forward by a large number of Members, the relatively poor quality of the offers which have been made, the ongoing negotiations on rules for services (safeguards,

subsidies, government procurement) which are years late in their conclusion, and the general reluctance of many Members to have the services negotiations advance ahead of progress in the other core areas (*i.e.*, agriculture and NAMA).

The Draft Text summarizes the road forward for the services negotiations as follows:

- The negotiations on trade in services should intensify and proceed with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries, and with due respect for the right of Members to regulate.
- All Members are urged to participate actively towards achieving a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing countries.
- Negotiations should take the size of economies of individual Members into account, in particular, recognizing the economic situation of LDCs (*i.e.*, the difficulties they face) and acknowledging that they are not expected to undertake new commitments.
- Members should negotiate with a view to expanding the sectoral and modal coverage of commitments and improving their quality.

In sum, with regard to the outlook for the services negotiations, unless negotiations improve and intensify, the outlook is tied to developments in agriculture and NAMA. Hence, a significant cloud continues to hang over the size of liberalization that will be achieved in services.

D. Rules

In the Bipartisan Trade Promotion Authority Act of 2002, Congress made the following finding:

Support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore –

(A) the recent pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing, and safeguard measures by WTO members under the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards has raised concerns; and

(B) the Congress is concerned that dispute settlement panels of the WTO and the Appellate Body appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member of provisions of that Agreement, and to the evaluation by a WTO member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.²⁰

In addition, Congress established the “principal negotiating objectives of the United States with respect to trade remedy laws” to be as follows:

²⁰ 19 U.S.C. § 3801(b)(3).

(A) to preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and

(B) to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.²¹

Thus, the U.S. Congress has set strong negotiating objectives in the area of rules.

The Doha Rules negotiations address four areas: review of the Antidumping Agreement (ADA); Review of the Agreement on Subsidies and Countervailing Measures (ASCM); whether special rules are needed for Fisheries Subsidies; and Regional Trade Agreements.

The major objectives of the Doha Rules negotiations are to (1) clarify and improve disciplines under the Antidumping and Subsidies Agreements, (2) preserve the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and (3) take into account the needs of developing countries and LDCs.

In the course of negotiations so far, differences among Members have emerged as to the proper scope and degree of the negotiations. That is, various Members have disagreed over whether the mandate concerns fine tuning, substantial modification, or significant clarifications of the AD and SCM Agreements.

Many proposals submitted have simply identified issues for negotiation. Substantive negotiations or textual proposals have not made significant progress. Of the four areas, review of the AD Agreement has been the most active, with more than 100 proposals to change the AD Agreement. The majority of these proposed changes, however, goes beyond “clarifying” or “improving” trade remedy disciplines but, instead, would significantly weaken them. For example, some Members have sought to tighten the rules on the application of anti-dumping measures by proposing measures that would substantially reduce the ability of Members to utilize trade remedies.

To date, the U.S. has not aggressively pursued the statutory negotiating objectives in the rules area. More specifically, while the U.S. has raised a host of issues consistent with the Congressional mandate in initial submissions (e.g., AD article 17.6 standard of review; the Continued Dumping and Subsidy Offset Act; the “zeroing” issue; alternative causes of injury; circumvention; related party test; calculation of all others rate using margins based partly on facts available; use of facts available; new shipper reviews; lesser duty rule/public interest test;

²¹ 19 U.S.C. § 3801(2)(b)(14).

due process and transparency improvements; perishable, seasonal and cyclical agricultural products; privatization; indirect subsidies; and prohibited subsidies), the U.S. has pursued only a few of these issues in subsequent submissions. It is hoped that the recent confirmation of a new Under-Secretary of Commerce for International Trade and the announced nomination of a new Assistant-Secretary for Import Administration will provide the Administration the necessary officials to correct the substantial imbalance that currently exists in the negotiating process.

One particular example of a negotiating objective that, if achieved, would have significant potential to benefit U.S. exporters vis-à-vis most of our trading partners, including China, is the issue of the disparate treatment of border taxes. Congress identified the resolution of border tax disparity as a principal trade negotiation objective.

The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.²²

One primary example of a border tax adjustment is the refund or remission of internal taxes paid on goods that are exported rather than domestically consumed. Typically, such refunded internal taxes are indirect taxes (*e.g.*, sales taxes and value-added taxes) but do not include direct taxes (*e.g.*, income taxes paid by a company). The GATT 1994 (Articles VI and XVI) permits border adjustments for indirect taxes but not for direct taxes. Because the U.S. has a direct tax system, however, U.S. companies that export have not received the advantage of border tax adjustments that exporters receive from other countries that use an indirect tax system. Although the U.S. has raised this issue in the Doha Rules negotiations, and in discussions about subsidy disciplines, the U.S. has not vigorously pursued this issue further and there has been no agreement at Doha as yet to address this significant problem for U.S. exporters.²³

The Draft Text briefly summarizes the status of negotiations in Rules by simply recalling the mandates in paragraphs 28 and 29 of the Doha Ministerial Declaration and reaffirming a commitment to further negotiations as set out in Annex D.

In Annex D to the Draft Text, the Chairman of the Rules Negotiations describes the scope of antidumping issues being addressed in the negotiations as follows:

In the negotiations on anti-dumping, the Negotiating Group on Rules has been discussing in detail proposals on such issues as determinations of injury/causation, the lesser duty rule, public interest, transparency and due process, interim reviews, sunset, duty assessment, circumvention, the use of facts available, limited examination and all others rates, dispute settlement, the definition of dumped imports, affiliated parties, product under consideration, and the initiation and completion of investigations, and that this

²² 19 U.S.C. § 3802(b)(15).

²³ TN/RL/W/78 (March 19, 2003).

process of discussing proposals before the Group or yet to be submitted will continue after Hong Kong.²⁴

It should be noted that Annex D has troubling language in some places including its reference to avoiding abuse of trade remedies such as antidumping measures. Specifically, Annex D calls on participants, in considering possible clarifications and improvements in the area of anti-dumping, to take into account “the need to avoid the unwarranted use of anti-dumping measures.” This consideration of “unwarranted use,” however, is not part of the negotiating mandate of the Doha Declaration as such and ignores the Article VI mandate that injurious dumping is condemned. Nor have the negotiations within Rules to date demonstrated a problem other than some countries’ dislike of having exporters subject to investigation in any circumstance..

In addition, other problems with the text of Annex D have been identified by members of Congress, as well as the Committee to Support U.S. Trade Laws (CSUSTL). *See, e.g.,* Letter from Representatives Rangel and Cardin to USTR Portman, November 22, 2005; Inside U.S. Trade, *Rangel, Cardin Urge U.S. Opposition To WTO Rules Chairman’s Text*, November 25, 2005. In their letter, Congressmen Rangel and Cardin wrote: “The text {i.e., Annex D} opens the door to a broad re-negotiation of the WTO Antidumping Agreement and contains numerous other flaws. Accordingly, {we} urge that it be rejected as a basis for further discussion or negotiation in this critical area.”).

E. Trade Facilitation

“Trade facilitation” refers to the simplification and streamlining of customs procedures to expedite the movement, release and clearance of goods. The U.S. strongly supports improvement in trade facilitation. Increasing world trade and the need to improve transparency and speed customs clearance procedures have generated wide support for trade facilitation negotiations in both developed and developing countries alike. One of the concerns about trade facilitation has been the impact it would have on infrastructure needs, costs and the internal capacity of developing countries and LDCs to implement any commitments that might be undertaken. Thus, the goals of the trade facilitation negotiations are to further expedite the movement, release and clearance of goods, and to enhance technical assistance and capacity building for developing countries and LDCs.

Trade facilitation is one area of the Doha negotiations that has seen notable progress. The report of the Trade Facilitation Committee notes: “Good progress has been made in all areas covered by the mandate, through both verbal and written contributions by Members.”²⁵

The Draft Text reaffirms the mandate and modalities for trade facilitation negotiations and endorses the negotiating group’s recommendations that negotiations continue and intensify with respect to Members’ proposals and regarding the issues of individual Member’s trade facilitation

²⁴ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex D at para. 6.

²⁵ Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), Annex E at para. 2.

needs and priorities and the cost implications of possible measures, technical assistance and capacity building, and S&D treatment.²⁶

III. China's Participation in the Doha Round

China's participation in the Doha Round has been limited and low key so far. Perhaps, this is not surprising given that China entered the WTO at the same time that the Doha Round was launched and that, as a new Member, China's first four years in the WTO have largely been focused on maintaining, implementing, and completing its accession commitments rather than on taking a major player role in the Doha negotiations. Nevertheless, China is actively participating in the Doha Round.

Interestingly, the U.S. has urged China to take a more active role in the Doha Round. In November 2005, Ambassador Portman emphasized in meetings with Chinese officials the need for greater participation by China in the Doha Round.

"I want China to be more engaged, not less engaged, in Doha," he said. "Although they have tabled some offers including services, I'd like to see them get even more engaged and be at the table even more, and particularly in agriculture, because ... I think they can play a role here in a sense as a bridge between some parties."²⁷

The idea that China can play the role of a bridge between developed and developing countries was also expressed in a speech by former Director General Supachai Panitchpakdi, who said:

More than ever we need China to join in with other Members to put the Round back on track and to move it forward. After all, it is very much in the interest of China that the Round succeeds, just as it is for the system overall. At a time when the WTO faces an impasse, we need China to use its influence to be a bridge between developed and developing member countries. China holds a unique position as being both a developing economy and an emerging superpower. China can use its position to show to developing countries that the path to growth and modernization is also the path to economic openness and integration. By the same token, China as a major trading partner can help ensure that the results of negotiations are balanced and can bring benefits to all.²⁸

²⁶ See Draft Ministerial Text, JOB(05)/298/Rev.1 (1 December 2005), at para. 27 and Annex E at paras. 4-7.

²⁷ BNA, International Trade Reporter, *APEC Trade Ministers Seek to Boost Doha, Press European Union on Agricultural Trade*, November 17, 2005; <http://www.bna.com/itr/arch322.htm>.

²⁸ DG Supachai Panitchpakdi, "Putting the Doha Development Agenda back on track: why it matters to China" (Beijing, 10 November 2003); http://www.wto.org/english/news_e/spsp_e/spsp19_e.htm.

A summary of China's positions in major negotiating areas of the Doha Round were provided by Mr. Xilai Bo, Chinese Commerce Minister, at the 2005 APEC Trade Ministers' Meeting. Broadly, Minister Bo noted that notwithstanding the significant commitments China made as part of its WTO accession and the many difficulties it has encountered in the implementation process, China remains committed to pushing forward the Doha Round trade talks and achieving a balanced outcome. He noted further that the Doha Round is about development and negotiations should address both the demand of developed countries to advance trade liberalization and the needs and interests of developing countries and newly acceded members. He said that China gives priority support to dealing with the special and differential treatment for least-developed countries, and remains opposed to classifying developing countries.²⁹

With respect to particular areas, Minister Bo expressed the following views:

- On NAMA, China believes that the negotiations should determine the formula which can substantially reduce tariffs at an early date; tariff peak and tariff escalation should be drastically reduced; developing countries should be accorded with enough special and differential treatment; existence of unbound tariff lines contravene the principle of free trade and transparency underlying the WTO.
- On agriculture, China believes that trade-distorting domestic support should be substantially reduced; a credible date to eliminate export subsidies should be determined at an early date.
- On services, China believes that priorities should be given to considering providing access in mode 4 which is of great interest to developing countries.
- On trade facilitation, China believes that efforts should be devoted to simplifying customs procedures to improve efficiency, and to strengthening assistance to developing countries and LDCs in terms of technology, capital and capacity-building.
- On rules, China believes that disciplines under the AD agreement should be clarified and improved to prevent abuse of the AD measures.³⁰

China's submissions to the Doha Round negotiating groups have covered a variety of issues. In many instances, China's submissions have been as part of a group submission (e.g., G20) rather than as a stand alone statement. Without being exhaustive, examples of submissions by China in the Doha Round (or submissions of a group of which it is a part) include the following:

²⁹ *Minister Bo: APEC should Make Contributions to the Advancement of the Doha Round Trade Talks*, MOFCOM News Release (June 4, 2005), available at <http://www.mofcom.gov.cn/aarticle/a/200506/20050600109229.html>.

³⁰ *Id.*

1. **Agriculture:** Draft G-20 proposal: Sensitive Products: Selection and Treatment (October 19, 2005)
2. **Agriculture:** G-20 proposal on Market Access and Domestic Support (October 12, 2005)
3. **NAMA:** Market Access for Non-agricultural products – Flexibilities for Developing Countries – Communication from Argentina, Bolivarian Republic of Venezuela, Brazil, China, Egypt, India, Indonesia, Namibia, Pakistan, Philippines South Africa (TN/MA/W/65, 8 November 2005)
4. **Services:** Review of Progress – Communication from Bolivia, Brazil, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nicaragua, Pakistan, Peru, Philippines and Thailand (TN/S/W/19, 31 March 2004)
5. **Rules:** Submission on Regional Trade Agreements by China (TN/RL/W/185, 22 July 2005)
6. **Rules:** Proposal on Establishment of Responding and Comment Procedure after Initiation – Communication from China (TN/RL/GEN/55, 4 July 2005)
7. **Rules:** Proposal of China on the negotiation on Antidumping (TN/RL/W/66, 6 March 2003)
8. **Trade Facilitation:** Clarification and Improvement of GATT Article VIII Applying Risk Management – Communication from China and Korea (TN/TF/W/49, 10 June 2005)
9. **Trade and Environment:** Statement by China on Environmental Goods at the Committee on Trade and Environment Special Session meeting of 22 June 2004 (TN/TE/W/42, 6 July 2004)

In addition to formal submission, China has made statements at various negotiating group meetings (including agriculture, services, and trade facilitation) as reflected in the minutes of those meetings. As they perhaps reflect a more specific Chinese view, the following review examples of China's statements and positions regarding selected topics upon which China has spoken -- treatment of newly-acceded members, agriculture, and NME antidumping measures.

A. Recently acceded members

Throughout the negotiation process, China has persistently argued that recently-acceded members should be accorded with lower obligations as they are still implementing accession obligations. For example, at special sessions of the Committee on Agriculture, China has emphasized that it had made substantial commitments in all three pillars and implementation of these commitments had exerted huge pressures on China's agriculture and rural development. As a result, China believed that further reduction commitments

would make it more difficult for China to address concerns about food security, farmers' livelihoods, and rural development.³¹

- As examples of its commitments, China noted that it had committed to reduce its tariff from the base level of 54% to the final bound level of 15.6% by 2004, 70% lower than its base rate in the Uruguay Round, which was much higher than the 24% cut for developing countries during Uruguay Round.
- China noted that the volume for its TRQ products is far beyond the minimum market access requirement for developed members, namely 5% of domestic consumption. The TRQ volume for wheat, cotton, sugar and wool in 2004 accounts for 9%, 14%, 20%, and 72% of Chinese average domestic consumption respectively in 2002-2004.)

Thus, in China's view, specific flexibility provisions for newly acceded members in market access should include: exemption from further reduction of certain products, lower level of reduction for other products, longer implementation periods, and deferred implementation. In the domestic support pillar, China believes that *de minimis* support should be exempt from reduction. In the export competition pillar, China believes that the monopoly status of exporting STEs in developing country Members should be preserved.³²

B. Agriculture

With respect to agriculture, China has expressed the view that given the vital importance of agriculture and rural development to many developing countries, "in order for the Doha round to reflect its development focus, a substantial reduction of domestic support and expansion of market access must be made by developed countries in the agriculture negotiations."³³

China believes that work in the agriculture negotiations should be focused on the most trade distorting policies in all three pillars.³⁴

Domestic support:

China believes that the amount of resources provided by developing countries – mainly through *de minimis* support to their farmers – is infinitely smaller than that

³¹ See, e.g., Summary Report on the Thirtieth Meeting of the Committee on Agriculture, Special Session Held on 17 March and 19 April 2005, TN/AG/R/19 (13 May 2005).

³² *Id.*

³³ Summary Report of the Thirty-third Formal Special Session of the Committee on Agriculture, Held on 13 September 2004, TN/AG/R/21 (7 October 2005).

³⁴ Summary Report on the Twenty-sixth Meeting of the Committee on Agriculture Special Session, Held on 8 October 2004 – Statement by China (on behalf of the G-20), TN/AG/R/15 (26 November 2004).

granted by developed countries. Thus, discussions should not be first held on *de minimis* regarding developing countries.³⁵

Export competition:

China believes there are three important elements in the negotiations on export competition:

1. The negotiations should be focused on deciding a credible date for the elimination of export subsidies.
2. Detailed schedules for phasing out all forms of export subsidies should be set up, and more specifically, on how to eliminate the export subsidies for the most heavily subsidized products.
3. A basic principle of standstill should be preserved, *i.e.*, no new export subsidy programs should be introduced.³⁶

Concerns about TRQ expansion:

During the negotiations, China has repeatedly voiced concerns over TRQ expansion for agricultural products, noting that China made significant TRQ commitments as part of its accession (*e.g.*, commitment in grain products now reaches more than 22 million tons, accounting for 37% of the total global TRQ volume in grain products) and China has a large rural population, most of whom produce agricultural products only for subsistence. China believes that it is more equitable to exclude the proportion consumed by farmers themselves from the total consumption and the tariff quota should be calculated on the basis of the amount of commercial domestic consumption.³⁷

C. Non-market economy clause

In the rules area, China has had some involvement and made a number of submissions. In one particular aspect of antidumping rules – the non-market economy methodology – China has made a specific proposal to revoke the provision, asserting that the NME provision is outdated as no truly state-controlled economy could accede to the WTO and that some Members abused the provision to provide unjustified protection to their domestic industries.³⁸

³⁵ *Id.*

³⁶ Summary Report on the Thirtieth Meeting of the Committee on Agriculture, Special Session, Held on 17 March and 19 April 2005, TN/AG/R/19 (13 May 2005).

³⁷ Summary Report on the Twenty-seventh Meeting of the Committee on Agriculture Special Session, Held on 19 November 2004, TN/AG/R/16 (4 February 2005).

³⁸ Proposal of the People's Republic of China on the Negotiation on Anti-dumping, TB/RL/W/66 (6 March 2003) at 1.16.

In effect, by seeking repeal of the NME provision, China is attempting to negate through the Doha negotiations on rules a specific commitment it made as part of its accession to the WTO, namely that other Members could apply the NME methodology to China for 15 years after China's accession. At this point, it is too early to tell whether such efforts will be reflected in any draft text going forward.

IV. Implications of Doha Round for US-China Trade Relations

As the Commission is aware, the bilateral trade relationship between the U.S. and China is important to both countries. Trade between the U.S. and China is rapidly growing and, unfortunately, continues to be heavily out of balance in China's favor.

A number of important issues underlying the trade relationship and trade imbalance have been noted and raised from time to time, for example, China's exchange rate policy (currency valuation), the difficulty of obtaining intellectual property rights enforcement; and the extent of China's implementation of its WTO commitments, to name just a few. While the U.S. and China have held communications on perceived areas of difficulty, the ongoing Doha negotiations are unlikely to significantly affect the bilateral imbalance, although the Doha negotiations will likely further the deepening of the bilateral relationship.

Independent of Doha, however, these persistent problems must be addressed and both the U.S. and China need to work toward a more mutually-beneficial trade relationship. Ambassador Portman has succinctly summarized this crucial need:

The US-China economic relationship again is of critical importance to both countries. There is much in the relationship that benefits both countries and that should encourage us. But to preserve and grow that relationship, there are issues that must be resolved. China must open up its economy further to foreign investment. China must open up its economy further to US products, it must address limitations in market access that continue to hamper US companies seeking to participate in the Chinese market. And it must act vigorously to address intellectual property infringement that not only deprives US companies of their ability to participate in the Chinese market, but also damages them worldwide.

In short, the benefits of economic opportunity and market access must flow more evenly in both directions. By achieving more balance generally, we will see more balance in our trade statistics China continues to grow quickly, and that is a welcome development. But China must also recognize that, as its economic and political heft as it expands, means that it must take on even more responsibility to the rules-based international economic system that has enabled that growth.³⁹

³⁹ Ambassador Robert Portman, U.S. Trade Representative, *Remarks at Conference Hosted by China-U.S. Relations: Trade, Diplomacy and Research*, Beijing, China, November 14, 2005; <http://www.state.gov/e/eb/rls/rm/2005/56931.htm>.

With respect to the effect of Doha itself, uncertainties in the Doha negotiations over what, if any, special treatment China and other recently-acceded countries will receive in the form of additional reduced liberalization obligations makes it difficult to assess the impact of expanded market access opportunities for U.S. exporters vis-à-vis China flowing from a successful Doha outcome.

It has been this author's view, expressed to Chinese government officials, that China has a great deal to gain from significant liberalization in the Doha process, especially from other developing countries whose tariffs (as well as other non-tariff import barriers) generally tend to be higher than those in developed countries. For example, as I noted in a paper prepared in January 2005 for the Department of WTO Affairs of China's Ministry of Commerce concerning what China should be seeking in the Doha Round:

The WTO Doha Development Agenda negotiations provide an excellent opportunity for China to help develop further trade relationships with many nations around the world but particularly within Asia and other major developing country spheres, areas where tariff bindings may be substantially higher than China's or where service sector liberalization commitments are substantially less than China's. Thus, in this author's view, China should be focusing on four aspects of market access negotiations within the Doha Development Agenda: agriculture, non-agricultural market access, service commitments and trade facilitation.

* * *

Thus, because bound tariff levels in both agricultural and non-agricultural goods are so much higher for so many WTO members than they are for China, China should seek aggressive liberalization in both agricultural and non-agricultural market access negotiations including among developing countries as part of the Doha negotiations since China's export opportunities will be expanded through liberalized tariff structures in other markets.

* * *

As China looks for a constructive role it can play in the ongoing Doha negotiations, it has the opportunity to take a leadership position on market access issues of great importance to Chinese exporters and importers and to the trading system as a whole. Seeking aggressive market access liberalization from all countries, including at least advanced developing countries, can foster closer economic cooperation and integration within Asia and across the world.⁴⁰

⁴⁰ Terence P. Stewart, *China and the Doha Development Agenda: What Should China Be Seeking?* (January 2005). Its Chinese translation was published in Issue 23 of *China WTO Tribune* (WTO Jing Ji Dao Kan) (March 2005) at pages 20-21.

Ambassador Portman has emphasized the potential benefit of Doha to China as well:

It is my view that Asia – perhaps more than any other part of the world – has the most to benefit and the most to lose depending on how the Doha round goes.

Conclusion

The Doha Development Agenda negotiations continue to offer major opportunities for U.S. companies, workers and communities. Unfortunately, the direction of the negotiations does not suggest substantial harmonization of tariff rates with important trading partners in areas of interest to the U.S., has put at serious risk U.S. trade remedy laws and will not significantly address the major causes of the bilateral imbalance with key trading partners like China. I hope that future events will disprove the above analysis, but the hour glass is running and no obvious breakthroughs seem imminent.

Let me give you one telling statistic: in the United States – a trading nation of the first order – exports of goods and services account for 10 percent of our GDP. In Asia, they account for 25 percent and in China the exports of goods and services accounts for 29 percent of the GDP.

Ambassador Robert Portman, U.S. Trade Representative, *Remarks at Conference Hosted by China-U.S. Relations: Trade, Diplomacy and Research*, Beijing, China, November 14, 2005; <http://www.state.gov/e/eb/rls/rm/2005/56931.htm>.